OIPE IAP44
NOV 03 2006
PATENT & TRADEMARK OFFICE

Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05).
Approved for use through xx/xx/200x. OMB 0651-00xx
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)
06502.0396-00000

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on _____

Signature _____

Typed or printed name _____

Application Number	Filed
10/051,277	January 22, 2002

First Named Inventor: **Paul A. LOVVIK**

Art Unit	Examiner
2164	S. R. Pannala

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.

☒ attorney or agent of record.
Registration number 55,940.

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

Signature (John M. Mulcahy)

John M. Mulcahy
Typed or printed name

571.203.2751
Telephone number

November 3, 2006
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 2 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

OIPE IAP44
NOV 03 2006
PATENT & TRADEMARK OFFICE

PATENT
Attorney Docket No. 06502.0396-00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	
	)	
Paul A. LOVVIK et al.	)	Group Art Unit: 2164
	)	
Application No.: 10/051,277	)	Examiner: S. R. Pannala
	)	
Filed: January 22, 2002	)	
	)	
For: METHOD AND APPARATUS FOR PROCESSING A STREAMED ZIP FILE	)	Confirmation No.: 7605

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

In the Final Office Action mailed September 5, 2006 ("FOA"), the Examiner (1) rejected claims 1-19 under 35 U.S.C. § 101 as being directed to non-statutory subject matter; and (2) rejected claims 1-19 under 35 U.S.C. § 103(a) as being unpatentable over Hendler et al. (U.S. Patent Application Publication No. 2002/0042833 A1) in view of Basin et al. (U.S. Patent Application Publication No. 2002/0120639 A1).

Applicants hereby request pre-appeal brief review of these rejections for at least the reasons set forth below. This Request is being filed concurrently with a Notice of Appeal and before the filing of an Appeal Brief, and otherwise meets the requirements set forth in the Official Gazette Notice of July 12, 2005.

The rejections set forth in the FOA are legally and factually deficient for at least the reasons set forth in the Reply to Office Action filed June 21, 2006 ("Reply"), and as summarized below.

I. The rejection of claims 1-19 under 35 U.S.C. § 101 is legally and factually deficient because the Examiner has failed to properly apply the Guidelines for Examination of Computer-Related Inventions to the terms of these claims.

As pointed out in pages 8-12 of the Reply, the Examiner has failed, in every respect, to establish a *prima facie* case that claims 1-19 are directed to non-statutory subject matter. The Examiner provides no reasoning or evidence, beyond pure conjecture, to support the allegation that independent claims 1, 5, 11 and 17 do "not produc[e] useful, concrete and tangible results." FOA, p. 2. Instead, the Examiner merely alleges, without reference to any claim language, that these claims "deal with [a] simple mathematical abstract idea." Id. In addition, the Examiner rejects dependent claims 2-4, 6-10, 12-16, 18 and 19 as non-statutory, based solely upon the recitations of independent claims 1, 5, 11 and 17. Id. This is wholly improper. "[W]hen evaluating the scope of a claim, every limitation in the claim must be considered." M.P.E.P. § 2106(II)(C).

Moreover, each of independent claims 1, 5, 11 and 17 clearly includes recitations that produce "concrete, tangible and useful" results. *See* Reply, pp. 10-11. With respect to claim 1, for example, at least the steps of "receiving a stream of data containing an un-extracted zip file," and "enabling a process to access contents of the central directory as the central directory is received" produce a useful, concrete, and tangible result. Claims 5, 11 and 17 contain similar recitations.

Further, as set forth in detail on page 11 of the Reply, independent claims 5, 11 and 17 each "defin[e] a useful machine or manufacture by identifying the physical structure of the machine or manufacture in terms of its hardware or hardware and software combination." M.P.E.P. § 2106(IV)(B)(2)(a). Accordingly, each of these claims "defines a statutory product." Id. For example, claim 5 is directed to "[a] system for receiving a streamed zip file . . . , the system comprising," *inter alia*, "a central processing unit; . . . and an interface module . . . for accessing contents of a central directory of the streamed zip file as the central directory is received."

Consequently, the rejection of claims 1-19 as being directed to non-statutory subject matter is factually and legally deficient under 35 U.S.C. § 101 and should be withdrawn.

II. The rejections of claims 1-19 under 35 U.S.C. § 103(a) are factually and legally deficient because Hendler et al. and Basin et al. fail to teach or suggest each and every recitation of the claims.

A. Independent claim 1.

The Examiner relies on Hendler et al. as teaching "the claimed step of 'enabling a process to access the contents of the central directory as the central directory is received' as the contents of each local file header is repeated in a central directory 640 located at the end of the zip archive [600]." FOA, p. 4. The Examiner also cites Hendler et al. as teaching to stream the central directory record 647 first so as to enable the client device to allocate space for the JAR file 600 according to the size and offset information in the record. Id., p. 13 (citing Hendler et al., ¶ 0076).

However, in the Hendler et al. method, the JAR (ZIP) file 600 is streamed "as a series of separate modules by *extracting* the ZIP central directory 640, as well as the individual files and their associated headers 631-636, and streaming each of these [extracted] elements 631-636, 640 separately." Hendler et al., ¶ 0073, ll. 2-7; *see also* id., ¶¶ 0067, and 0074-76. Consequently, in Hendler et al., the central directory record 647 cited by the Examiner is streamed, and therefore received, *separately*, and in *extracted* form.

In the method of claim 1, the zip file, which "comprises a set of files and a central directory," is received in "*un-extracted*" form. Thus, contrary to the Examiner's assertions, Hendler et al. does not "enable a process to access contents of the central directory *as the central directory is received*," because (as pointed out on page 12 of the Reply) the process by which Hendler et al. accesses the contents of the central directory *requires* that the central directory to be extracted prior to receipt. *See* id., ¶ 0073, 74 and 76.

Moreover, Basin et al. teaches that "[g]enerally, the contents of a compressed file *cannot* be accessed unless the archive is uncompressed." Basin et al., ¶ 0004, ll. 1-2. Instead, Basin et al. teaches that "[w]hen files are dropped [(i.e., downloaded)] from archive to Explorer, Explorer requests available standard data formats. In this instance, the data object will need to uncompress the data." Basin et al., ¶ 0032, ll. 6-9. In order to extract individual files and/or folders archived in a zip file, "a user opens the zip file in

Explorer ... and invokes the extract dialog, by selecting the Extract menu item in the right-click context menu. .... Alternatively, a user may select PKZIP|Extract Here to extract the contents of the archive into the directory where the zip archive resides." Id., ¶ 0037, ll. 1-8. Thus, as pointed out on page 14 of the Reply, the Basin et al. method would allow the central directory to be accessed only *after* the entire zip file has been received and extracted by the user. Id.

Consequently, neither Hendler et al., nor Basin et al., nor their combination, teach "enabling a process to access contents of the central directory as the central directory is received." Accordingly, the rejection of claim 1 under 35 U.S.C. § 103(a) is factually and legally deficient and should be withdrawn.

B. Independent claims 5, 11 and 17.

The Examiner asserts that Hendler et al. teaches "'accessing contents of the streamed zip file as the central directory is received' as the integration of streamed modules with executing modules are provided by client 410 dynamic module linking facilities." FOA, p. 7; *see also* id., pp. 9 and 11. However, as the Examiner admits (id.), Hendler et al. fails to teach "receiv[ing] a streamed *un-extracted* zip file," as recited in claims 5, 11 and 17. Instead, as explained in Section A, above, Hendler et al. teaches to stream zip files as a series of separate modules in *extracted* form. *See* Hendler et al., ¶ 0073, ll. 2-7, and ¶¶ 0074-0076. Thus, as explained on pages 16 and 19 of the Reply, Hendler et al. also fails to teach "accessing contents of [a] central directory of the streamed zip file *as the central directory is received.*"

Moreover, Basin et al. is not relied upon to teach, and does not teach, the claimed interface module. As explained in Section A, above, and on pages 16 and 19-20 of the Reply, Basin et al. provides access to the central directory only *after* the entire zip file has been received and extracted by the user. Basin et al., ¶ 0032, ll. 6-9; ¶ 0037, ll. 1-8. Consequently, neither Hendler et al., nor Basin et al., nor their combination, teach "accessing contents of [a] central directory of the streamed zip file *as the central directory is received.*"

For at least these reasons, the rejection of claims 5, 11 and 17 under 35 U.S.C. § 103(a) is factually and legally deficient and should be withdrawn.

C. Dependent claims 6 and 12.

In the rejections of claims 6 and 12, the Examiner asserts that Hendler et al. teaches that "'the interface module is a Java class comprising a central header subclass and a central directory subclass' as the streamed modules have a Java class comprising central directory headers 641-646 and central directory 640 as subclasses." FOA, p. 7 and p. 9. However, as pointed out on page 17 of the Reply, the portions of Hendler et al. cited by the Examiner describe *the streamed file*, itself, and not the alleged interface. *See* Hendler et al., ¶ 0084, ll. 1-5.

Nowhere does Hendler et al. teach an interface module "for accessing contents of a central directory of the streamed zip file as the central directory is received," as recited in claims 5 and 11, "wherein *the interface module* is a Java class comprising a central header subclass and a central directory subclass," as recited in claims 6 and 12 (emphasis added). Moreover, Basin et al. does not cure the cited deficiencies of Hendler et al.

For at least these additional reasons, the Examiner's rejection of claims 6 and 12 under 35 U.S.C. § 103(a) is factually and legally deficient and should be withdrawn.

D. Conclusion

In light of the above arguments and those presented in the Reply, Applicants submit that the rejections of claims 1-19 set forth in the Final Office Action are legally deficient. Therefore, the rejection should be withdrawn and the claims allowed.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: November 3, 2006

By: _____
John M. Mulcahy
Reg. No. 55,940